Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

# Supreme Court of the United States

ROY JORDAN,

*Petitioner,*

v.

A. ELAINE JORDAN,

*Respondent.*

**On Petition For Writ Of Certiorari To The Court Of Appeal, Fourth Appellate District, Division One, State Of California**

## PETITION FOR WRIT OF CERTIORARI

ROY JORDAN
15 Monroe Close
Market Harborough
Leicestershire LE16 7QN
United Kingdom
Tel: +44 1858 466293

*Pro Se Petitioner*

## QUESTIONS PRESENTED

***Whether the petitioner was denied due process of law by the state court?***

Does it not fall to the Federal Supreme Court to instruct state courts to make concessions in a case involving a US citizen living abroad to acknowledge the inherent logistical difficulties in a multi-jurisdictional case and to make reasonable allowances to ensure fair treatment?

Should it not be acknowledged by the courts that delays caused by thousands of miles distance for communication and travel lead to difficulties in locating legal counsel willing to represent a US citizen living abroad? Once a law firm has been identified and agrees to undertake the instruction, the petitioner runs the risk of the law firm subsequently backing out after the research stage and the petitioner is obliged to start the whole process again. If one is fortunate enough to secure representation, monies wired must clear the local bank to produce spendable funds before the law firm can be expected to pay various court fees on the client's behalf. Even the mailing of court documents does not always take account of an overseas address; for example, the country of destination is omitted (see Appendix).

On March 12, 1999 the Court File shows Roy had notified the San Diego Court in respect of a March 15, 1999 hearing that he was currently defending himself in the English Courts on the exact same issue and under court direction to meet legal document submission deadlines and had requested that the court appearance dates

**QUESTIONS PRESENTED** – Continued

be moved (see Appendix). The San Diego Court did not respond in any way to this request and made their decision without allowing Roy his "day in court" or his position to be heard. Only the Federal Supreme Court has the obligation and the power to create a level playing field for the US citizen abroad and ensure that fair treatment in law is something that every US citizen can expect.

## OPINIONS

**Document 1.** Court of Appeal, Fourth Appellate District, Division One, State of California – D036330 – (Super. Ct. No. D304832) – Filed October 26, 2001

Petition for review DENIED (filed January 29, 2002)

**Document 2.** Superior Court of California, County of San Diego – D304832 – Findings and Order After Hearing dated 3/15/99

## JURISDICTION

The Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257.

## CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV – Citizenship rights. Ratified 7/9/1868.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

## STATEMENT OF THE CASE

1997: The ex-wife filed a proceeding in England seeking to enforce the 1991 order for an equalizing payment of US$190,000 plus an additional $10,000 that she had allegedly lent Roy.

1998: The trial court in England refused to hear the case saying that it was better heard in San Diego. This ruling essentially said that, while the English court had the jurisdiction to hear the case, the choice of England was not convenient because the main proceeding had been in California applying California law and it was better heard there. She appealed that decision to the English Court of Appeal. This power to refuse to hear a case based on inconvenient forum is commonly exercised in both British and American courts.

The ex-wife was granted leave to appeal the English trial court decision on November 1, 1998. She proceeded with that appeal and, later in the month, filed an Order to Show Cause (OSC) in the San Diego family court seeking the same relief as in the English court. A hearing was set for mid-March 1999.

March 15, 1999: Roy failed to appear to be represented at this hearing. The English counsel sent a letter to the court asking for a two-month continuance because of the pending English appeal; but this was denied. This denial was a discretionary decision by the trial judge and is reviewed by a court of appeal for an "abuse of discretion" under state law. On March 23, the San Diego Court issued an order awarding the money plus interest.

July 12, 1999: The British Court of Appeal upheld the British trial court, agreeing that the case was better handled in a San Diego court.

March 13, 2000: Roy filed a motion to set aside the 1999 order so that he could litigate it in San Diego. His counsel offered various justifications for setting aside the order, all issues of state law.

August 10, 2000: The trial court denies the motion.

September 2000: Roy appealed the trial court denial of the motion. The issues raised in his opening brief were: (a) the application of Chapter 10 of the California Family Code to his case and (b) the inherent equity powers of the trial court. These were both issues of state law. The Court of Appeal affirmed the trial court in October 2001 and the Supreme Court of California denied review in January 2002.

## REASONS FOR GRANTING THE PETITION

Roy feels that he is entitled to relief from the Federal Supreme Court. The ex-wife received (2) parcels of land from Roy in lieu of the $190,000 note and the San Diego county records show that Roy deeded these via "Quit Claim" which allowed the ex-wife to sell one parcel on December 31, 1992 for $128,200 and the other parcel on December 31, 1994 for $50,000. Despite the fact that these proceeds total an amount very close to the $190,000 note value, the State Court ruled that Roy should pay the original full $190,000 plus 10% interest per year. Roy, as a

citizen of the United States, requests relief from the Federal Supreme Court to allow him due process in law and to ensure that, as a citizen living abroad, he is not denied equal protection of the laws of the United States and no abridgement of privileges.

## CONCLUSION

This request for relief from the Federal Supreme Court is respectfully submitted,

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United Kingdom
Tel: +44 1858 466293

*Pro Se Petitioner*

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

| | |
|---|---|
| In re the Marriage of ROY G. and A. ELAINE JORDAN, | D036330 |
| ROY G. JORDAN, Appellant, v. A. ELAINE JORDAN, Respondent. | (Super Ct. No. D304832) (Filed Oct. 26, 2001) |

APPEAL from an order of the Superior Court of San Diego County, Thomas Ashworth, III, Judge. Affirmed.

Roy G. Jordan appeals an order denying his motion to set aside a 1999 postjudgment order enforcing the 1991 judgment dissolving his marriage to A. Elaine Jordan.[1] Roy contends the trial court erred by denying his motion because Family Code section 2120 et seq.[2] empowered the court to set aside its postjudgment order and, in any

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[1] As is common in family law proceedings, we refer to the parties by their first names for purposes of clarity and not out of disrespect. (*In re Marriage of Olsen* (1994) 24 Cal.App.4th 1702, 1704, fn. 1; *Askew v. Askew* (1994) 22 Cal.App.4th 942, 947, fn. 6.)

[2] All statutory references are to the Family Code unless otherwise specified.

event, the court should have exercised its equitable power to set aside that order. We affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

In April 1991 the trial court entered a judgment (Judgment) dissolving Roy's and Elaine's 30-year marriage. The Judgment incorporated the terms of their marital separation agreement (MSA), pursuant to which Roy agreed to pay to Elaine an equalizing payment of $190,000 and to execute a promissory note payable to her for that amount.[3] The MSA incorporated in the Judgment also provided:

> "In the Judgment of Dissolution of Marriage anticipated by this [MSA], there shall be reserved to the San Diego County Superior Court, in addition to the jurisdiction specifically mentioned elsewhere in this [MSA], the jurisdiction to[:]
>
> "a. Supervise the payment of any obligation ordered paid or allocated in this [MSA].
>
> "b. Supervise the division of assets as agreed in this [MSA].
>
> [¶] . . . [¶]

---

[3] Paragraph 14 of the MSA provided: "a. To equalize the division of community and co-owned property [Roy] shall pay to [Elaine] the sum of $190,000.00. This obligation shall be paid by promissory note signed by [Roy] concurrent with the execution of this Agreement in favor of [Elaine] in the sum of $190,000.00. Said promissory note shall be in the form of that set forth in Schedule 'C' attached hereto.

"d. Supervise the overall enforcement of this [MSA]."

In November 1998 Elaine filed a petition for an order to show cause (OSC), alleging, inter alia, that Roy had not paid the $190,000 equalizing payment owed to her under the Judgment and setting a hearing date of March 15, 1999.[4] On January 14, 1999, Roy was personally served with notice of the OSC. However, Roy did not appear at the March 15 OSC hearing. On March 23 the trial court issued an order (Order), finding that Roy had not paid the equalizing payment of $190,000 required by the Judgment and awarding Elaine that amount plus interest.

On March 13, 2000, Roy filed a motion (Motion) for an order setting aside the Order based on the ground that Elaine committed perjury in obtaining the Order by declaring she had received little or no payment from him toward the $190,000 amount. Roy argued that because of Elaine's alleged perjury the trial court could set aside the Order pursuant to section 2120 et seq. Elaine opposed the Motion, arguing that section 2120 et seq. did not apply to allow the court to set aside the Order because those provisions applied only to judgments and not to post-judgment orders.

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[4] In 1997 Elaine apparently field an action against Roy in England where he resided, attempting, inter alia, to enforce his obligation under Judgment to pay the $190,000 equalizing payment. The English trial court ultimately dismissed or otherwise denied Elaine's claim finding that the controversy should more appropriately be decided in the San Diego County Superior Court. Elaine filed an appeal of that decision, which ultimately was unsuccessful.

On August 10 the trial court issued an order denying the Motion:

> "The court agrees with [Elaine] on three grounds:
>
> "1. Family Code, Chapter 10, starting with Section 2120 applies to [j]udgments after January 1, 1993. This is a judgment that was entered before that (the underlying judgment).
>
> "2. The only basis that has been suggested was perjury. Perjury under Family Code Section 2122[, subdivision] (b) relates only to Declarations of Disclosure and Income and Expenses Declarations, neither of which were involved here.
>
> "3. It was the intent of the Legislature that this section relates to [j]udgments and not post-judgment orders. The [s]tatutory scheme as a whole, taking into account that it intends to expand on Code of Civil Procedure Section 473 by its own statements and 473 specifically states 'orders' and this section specifically does not state 'orders' that it was not intended to extend to orders by any normal statutory interpretation.
>
> "4. When the code states certain things, such as Declarations of Disclosure and Income and Expense Declarations, that omits, by normal statutory construction something other than those documents.
>
> "5. Each provision in this section refers to [j]udgments. It refers to stipulated or uncontested judgment[s], and all the way through this section that is the language that is used. And the language refers to documents that are used for the [j]udgment in Family Law cases, not for

subsequent proceedings, not for temporary proceedings. We are talking about [j]udgments.

"Therefore, Family Code Section 2100 et seq. does not apply in this matter.

"Code of Civil Procedure [section] 473 does not apply because the alleged [perjury] would only be intrinsic fraud. The alleged perjury itself is very questionable as to whether it would constitute perjury in any normal way that term is used.

"This section indicated that the court may relieve a spouse from a judgment or any part of a judgment, it is discretionary. It requires at least some diligence on the part of the person attempting to set it aside and that was not exercised here."

Roy timely filed a notice of appeal.[5]

## DISCUSSION

### I

### *Section 2120 et seq. Does Not Apply to the Postjudgment Order in This Case*

Roy contends the trial court erred by finding that section 2120 et seq. did not apply to the Order.

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[5] The order denying the Motion is appealable as a postjudgment order under Code of Civil Procedure section 904.1, subdivision (a)(2).

A

Chapter 10 of the Family Code (§ 2120 et seq.), titled "Relief From Judgment," provides for relief from a judgment on specified grounds. Section 2121 provides:

> "(a) In proceedings for dissolution of marriage, . . . the court may, on terms that may be just, relieve a spouse *from a judgment*, or any part or parts thereof, *adjudicating support or division of property*, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this chapter." (Italics added.)

Section 2122 provides:

> "The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following: [¶] . . . [¶]
>
> "(b) Perjury. An action or motion based on *perjury in the preliminary or final declaration of disclosure or in the current income and expense statement* shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury. . . . " (Italics added.)

Chapter 10 of the Family Code "applies to judgments entered on or after January 1, 1993." (§ 2129.)

B

We conclude Chapter 10 of the Family Code (§ 2120 et seq.) does not apply to allow a court [sic] set aside the Order in this case. The Motion requested that the trial court set aside the Order, *not* the Judgment. The Order is

a postjudgment *order* enforcing the provisions of the Judgment. The Order is *not* a judgment. "A judgment is defined by the code as 'the final determination of the rights of the parties in an action or proceeding.' [Citations.] It is " 'the law's last word in a judicial controversy.' " [Citation.]" (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1145.) In this case the Judgment entered in 1991 was the final determination of the rights of the parties. Although the trial court reserved jurisdiction to supervise, inter alia, Roy's payment of the $190,000 amount after entry of the Judgment, that reservation of jurisdiction did *not* preclude the Judgment from finally determining the parties' rights. The California Supreme Court has explained that a judgment is final when " ' "it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." ' " [Citations.]" (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304; see also *Olson v. Cory* (1983) 35 Cal.3d 390, 399.) A judgment is final (and appealable) if it "leaves no issue to be determined except the fact of compliance with its terms." (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9) The 1999 Order is postjudgment order that enforced the court's prior final determination of the parties' rights under the Judgment.

Assuming arguendo the Order is a judgment, the Order, allegedly obtained by Elaine's perjury, is not a judgment from which relief can be granted under section 2122. Section 2122, subdivision (b) limits its relief provisions to judgments obtained based on perjury "in the preliminary or final declaration of disclosure or in the current income and expense statement." In obtaining the

Order, Elaine did not file either a preliminary or final declaration of disclosure *or* a current income and expense statement. Those documents are defined in Chapter 9 of the Family Code (§ 2100 et seq.) relating to disclosures required by spouses *before* a marital separation agreement is executed for the resolution of property issues and a judgment of dissolution incorporating that agreement is entered. Section 2106 generally provides: "[N]o judgment shall be entered with respect to the parties' property rights without each party . . . having executed and served a copy of the final declaration of disclosure and current income and expense declaration. . . . "[6] Therefore, the preliminary or final declaration of disclosure and the current income and expense statement referred to in section 2122, subdivision (b) are those documents required by Chapter 9 of the Family Code to be completed and

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[6] Section 2103 provides: "In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage . . . shall serve on the other party a preliminary declaration of disclosure under Section 2104 and a final declaration of disclosure under Section 2105. . . . " Sections 2104 and 2105 describe the preliminary and final declarations of disclosure as those specific forms approved by the Judicial Council. Section 2104, subdivision (e) also requires that parties provide each other with income and expense declarations along with their preliminary declarations of disclosure. Section 2101, subdivision (e) provides: " 'Income and expense declaration' includes the Income and Expense Declaration forms approved for use by the Judicial Council, and any other financial statement that is approved for use by the Judicial Council in lieu of the Income and Expense Declaration, if the financial statement form satisfies all other applicable criteria."

served by the parties *before* a judgment dividing the parties' property is entered. The 1991 judgment in this case divided the parties' property and awarded to Elaine the $190,000 equalizing payment. The 1999 Order did not divide the parties' property and no current declarations of disclosure or income and expense statements were required or relevant to the proceeding.[7] Because the Order is not the type of judgment described in section 2122, subdivision (b), any perjury that Elaine may have committed in obtaining the Order did not provide a ground under section 2122 for relief from the Order.[8]

## II

### *The Trial Court Correctly Found Roy Did Not Allege Any Extrinsic Fraud That Otherwise Could Have Supported Setting Aside the Order*

Roy contends that if section 2122 is inapplicable the trial court nevertheless erred by not exercising its equitable power to set aside the Order.

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[7] Section 2121, subdivision (a) also supports our conclusion by limiting the provisions of Chapter 10 of the Family Code to "judgment[s] . . . adjudicating support or division of property." The Judgment, *not* the Order, adjudicated the division of the parties' property.

[8] Assuming arguendo that the Order was a qualifying judgment under section 2122, subdivision (b) and that Elaine committed perjury in obtaining the Order, we nevertheless conclude that Roy has not carried his burden on appeal to show the trial court abused its discretion in denying the Motion based on his failure to provide a reasonable explanation for his dilatory conduct in attempting to set aside the Order. (*In re Marriage of Roseyear* (1998) 65 Cal.App.4th 673, 682-683; *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138.)

A

"Courts have . . . been held to have inherent power to set aside a judgment, even after the six-month period of Code of Civil Procedure section 473 has passed, if the parties have been deprived of the opportunity to litigate their claim[s]. Thus, one court has stated the applicable rules as follows: 'After six months when relief is no longer available under section 473 of the Code of Civil Procedure for mistake, inadvertence, surprise, or excusable neglect, an otherwise valid judgment may only be set aside for extrinsic fraud or mistake. [Citation.] *Extrinsic fraud occurs when a party is deprived of his opportunity to present his claim or defense to the court, where he was kept in ignorance or in some other manner fraudulently prevented from fully participating in the proceeding.* [Citation.] Examples of extrinsic fraud are: concealment of the existence of a community property asset, failure to give notice of the action to the other party, convincing the other party not to obtain counsel because the matter will not proceed (and it does proceed). [Citation.] A party's representation of the value of an asset, favorable to himself, does not constitute extrinsic fraud. [Citation.] . . . [¶] Fraud is intrinsic and not a valid ground for setting aside a judgment when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary, but has unreasonably neglected to do so. [Citation.] Such a claim of fraud goes to the merits of the prior proceeding which the moving party should have guarded against at the time.' [*In re Marriage of Melton* (1994) 28 Cal.App.4th 931, 937-938, citing *In re Marriage of Stevenot*

(1984) 154 Cal.App.3d 1051.]" (*In re Marriage of Varner, supra*, 55 Cal.App.4th at pp. 139-140, italics added.)

B

In this case Roy did not allege in the Motion or his supporting papers that he was not served with notice of the OSC hearing or that he otherwise was fraudulently prevented from participating in that hearing or deprived of an opportunity to present a defense. On the contrary, the record shows that Roy was served with notice of the March 15, 1999, OSC hearing, but that he either chose not to, or neglected to, appear or otherwise present a defense. Fraud is *intrinsic* and *not* a valid ground for setting aside a judgment or order if the party has been given notice of the action and has had an opportunity to present his case and protect himself from any mistake or fraud of his adversary, but has unreasonably neglected to do so. (*In re Marriage of Stevenot, supra*, 154 Cal.App.3d at p. 1069.) To the extent Roy asserted he was defrauded by Elaine's alleged misrepresentation that she received little or no payments toward the $190,000 equalizing payment, he "merely alleged intrinsic fraud, which is not grounds for vacating a judgment [or order]." (*Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 833.) Roy was served with notice of the OSC hearing and neglected to avail himself of the opportunity to present a defense. Furthermore, Elaine's filing of an action against Roy in England prior to her filing the OSC petition, and her subsequent appeal of the English court's adverse decision, did not deprive Roy of a fair opportunity to be heard on the OSC in the San Diego County Superior Court or fraudulently prevent him from fully participating in that proceeding. Elaine's litigation

in England did not constitute extrinsic fraud. Therefore, the trial court correctly found that Roy did not show Elaine committed any extrinsic fraud in obtaining the Order for which the court could exercise its inherent equitable power to set aside the Order.[9]

DISPOSITION

The order is affirmed.

/s/ McDonald
McDONALD, J.

WE CONCUR:

/s/ Huffman
HUFFMAN, Acting P. J.

/s/ O'Rourke
O'ROURKE, J.

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[9] Roy does not show that the trial court had any equitable power to set aside the Order other than for extrinsic fraud. Section 2128, subdivision (c), cited by Roy, merely provides: "Nothing in [Chapter 10 of the Family Code] is intended to restrict a family law court from acting as a court of equity." Section 2128, subdivision (c) does *not* expand a trial court's equitable powers; it merely provides that Chapter 10 of the Family Code does not restrict the equitable powers a trial court otherwise possesses. Furthermore, the cases cited by Roy merely discuss courts' equitable power in general and not in the context of a motion to set aside a judgment or order after the six-month period of Code of Civil Procedure section 473. Those cases do not show that the trial court had the inherent equitable power to set aside the Order.

COURT OF APPEAL – STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of A. ELAINE and ROY G. JORDAN.
A. ELAINE JORDAN,
Respondent,

v.

ROY G. JORDAN,
Appellant.
**D036330**
San Diego County No. D304832

(Filed Feb. 23, 2001)

THE COURT:

Appellant's request to augment the record is Granted in part and Denied in part. The request to augment the Reply Declaration is Granted. The Declaration attached to the motion and filed July 13, 2000 is deemeed a part of the record on appeal. The request to augment the letter from Benussi & Co. is DENIED.

/s/ McIntyre
Acting Presiding Judge

cc: All Parties

TELEPHONE NO.: (619) 296-4333

FOR COURT USE ONLY

(Filed Mar. 23, 1999)

ATTORNEY OR PARTY WITHOUT ATTORNEY
(*Name and Address*):
L. Hunter Tracht, Esq. Bar #041691
A Professional Corporation
136 Redwood Street
San Diego, CA 92103-5620

ATTORNEY FOR (*Name*): A. ELAINE JORDAN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego

| | |
|---|---|
| STREET ADDRESS: | 1501-55 Sixth Avenue |
| MAILING ADDRESS: | P.O. Box 128 |
| CITY AND ZIP CODE: | San Diego, CA 92101-1048 |
| BRANCH NAME: | Family Court Building |

PETITIONER/PLAINTIFF: A. ELAINE JORDAN
RESPONDENT/DEFENDANT: ROY G. JORDAN
CLAIMANT:

FINDINGS AND ORDER AFTER HEARING
(Family Law – Domestic Violence Prevention – Uniform Parentage)

CASE NUMBER: D 304832

1. This proceeding was heard on (date): 3/15/99

at (time): 8:45 a.m.

In Dept: F-3

Room:

by Judge (*name*): Thomas Ashworth, III
[ ] Temporary Judge

[x] Petitioner/plaintiff present
[x] Attorney present (*name*): A. Elaine Jordan

[ ] Respondent/defendant present
[ ] Attorney present (*name*):

[ ] Claimant present
[ ] Attorney present (*name*):

On the order to show cause of Motion filed
(date): *11/25/98* by (*name*): A. Elaine Jordan

2. **THE COURT ORDERS**
3. Custody and visitation: [ ] as attached
[x] not applicable

4. Child support: [ ] as attached
[x] not applicable

5. Spousal-Family support: [ ] as attached
[x] not applicable

6. Property orders: [x] as attached
[ ] not applicable

7. Domestic Violence miscellaneous orders
[ ] as attached
[x] not applicable

8. Other orders: [x] as attached
[ ] not applicable

9. [ ] Attorney fees (*specify amount*): $
[ ] payable as child support
[ ] payable as spousal support
Payable to (*name and address*):

Payable [ ] forthwith [ ] other (*specify*):

10. All other issues are reserved until further order of the court.

date: Mar. 28, 1999

/s/ Thomas Ashworth, III

Approved as conforming to court order.

SIGNATURE OF ATTORNEY FOR
[ ] Petitioner/Plaintiff
[ ] Respondent/Defendant

[SEAL]
By S.L. Senda Deputy
S.L. SENDA

ATTACHMENT TO FINDINGS
AND ORDER AFTER HEARING

Petitioner's Order to Show Cause Re: request to reimburse Petitioner for health insurance premiums in the amount of $20,813.72, that Respondent reimburse Petitioner forthwith for all attorneys fees and costs associated with the Madison Wire and Bank of America actions for a total of $13,241.02, the Court to enter an order establishing the amount of an equalizing payment of $190,000, plus interest, pursuant to Page 8, Paragraph 14 of the Marital Settlement Agreement incorporated into a Judgment of Dissolution filed April 25, 1991, and attorneys fees and costs, came on regularly for hearing, on March 15, 1999 at 8:45 a.m., in Department F-3 of the above-entitled court, the Honorable Thomas Ashworth, III, judge presiding. Petitioner was personally present and represented by her attorney, L. Hunter Tracht. Respondent not being present. Upon the call of the calendar, the

court inquired as to the presence of Respondent, Roy Gregory Jordan or his representative, and there was no answer. The court received into evidence the Affidavit of Service by Dennis O'Kane, signed January 15, 1999, describing the personal service made by Mr. O'Kane on Respondent, Roy Gregory Jordan on Thursday, January 14, 1999.

Upon declarations filed, oral presentation being made, Petitioner being sworn and testifying, and good cause shown,

IT IS HEREBY ORDERED:

1. That Petitioner shall have judgment against Respondent for the sum of $20,813.72, which will bear legal interest at the rate of 10% per annum, from March 15, 1999 until paid. The basis of said order is the Court finds that Respondent is in violation of Paragraph 4(b), Page 3 of the parties' Marital Settlement Agreement filed April 25, 1991, and that Respondent failed to maintain, for the benefit of Petitioner, health insurance coverage on Petitioner, until the death of either party, Petitioner's remarriage or cohabitation with an adult male. The Court finds, upon oral testimony of Petitioner, she expended $20,813.72 for medical insurance coverage which Respondent should have provided from January 1994 through November 1998.

2. The Court hereby grants to Petitioner judgment in the sum of $13,241.02, plus interest at the legal rate of 10% per annum, from March 15, 1999 until paid. The basis of such judgment to Petitioner is the Court's finding that Respondent failed to comply with Paragraph 13, Page 7 of the parties' Marital Settlement Agreement filed with

the Court on April 25, 1991, in that Respondent failed to assume and hold Petitioner harmless from all liabilities, obligations, liens, or encumbrances presently existing against Respondent's business and the assets thereof, and to defend Petitioner at his sole expense against any such claims made. The Court finds that Petitioner's Attorney's fees of $13,241.02 were necessary expenditures by her to defendant against Respondent's business debts brought against her, which fees expended by her were reasonable and necessary to defend against said action due to Respondent's failure to do so.

3. The Court grants Judgment against Respondent for the sum of $190,000, plus interest at the legal rate of 10% per annum, from December 31, 1993 until paid. The basis of such award by the Court is a finding by said Court that Respondent failed to pay the judgment for an equalizing payment of $190,000 pursuant to Page 8, Paragraph 14 of the Marital Settlement Agreement that was filed with the Court on April 25, 1991.

4. The Court denies Petitioner's request for attorneys fees and costs without prejudice to refile such request upon compliance with Local Court Rules which require a current Income & Expense Declaration.

[SEAL]

[LOGO]
Her Majesty's
Court of Appeal
12 Jul 1999

COURT 63

Appeal Reference

CCFMI 1998/1506/2

FC3 1999/5604/2

MONDAY 12TH JULY 1999

IN THE COURT OF APPEAL ORDER NO. 260d/99

ON APPEAL FROM THE HIGH COURT OF JUSTICE

FAMILY DIVISION

PRINCIPAL REGISTRY 5154/97

BEFORE LORD JUSTICE SIMON BROWN
LORD JUSTICE AULD
and LORD JUSTICE THORPE

BETWEEN

A. ELAINE JORDAN

PETITIONER

- and -

ROY GREGORY JORDAN

RESPONDENT

ON READING the Notice of Appeal received on 3rd December 1998 filed on behalf of the Petitioner on appeal against the order of the Honourable Mrs Justice Hogg

dated 8th July 1998 when permission given to the Petitioner on 21st October 1997 was revoked under section 13 of the Matrimonial and Family Proceedings Act 1984 to apply for financial relief after a foreign divorce against the Respondent.

AND ON READING the notices dated 16th March and 20th May 1999 respectively, filed on behalf of the Petitioner, applying for permission to rely on further evidence.

AND ON READING the notice dated 18th May 1999 filed on behalf of the Respondent applying for permission to rely on further evidence.

ON HEARING Mrs Jennifer Roberts, counsel on behalf of the Respondent and Mr Peter Duckworth, counsel on behalf of the Petitioner.

IT IS ORDERED THAT:-

1. the Petitioner's and the Respondent's application seeking permission to rely on further evidence be granted.

2. this appeal be dismissed and that the order of the Honourable Mrs Justice Hogg dated 8th July 1999 be affirmed.

3. the Petitioner do pay one half of the Respondent's costs of this appeal such costs to be assessed if not agreed.

4. the Petitioner's application for permission to present a Petition of Appeal to the House of Lords be refused

[The court sat from 11.10 am to 1.00 pm and 2.00 pm to 4.30 pm on 26th May 1999; and from

10.05 am to 10.12 am on 12th July 1999]

By the Court

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TELEPHONE NO.: 283-7777

FOR COURT USE ONLY

(Filed Aug. 10, 2000)

ATTORNEY OR PARTY WITHOUT ATTORNEY
(*Name and Address*):
Kathy R. Recordon
Recordon & Recordon, A.P.C.
3131 Camino del Rio North, Suite 1045
San Diego, CA 92108
ATTORNEY FOR (*Name*): A. Elaline Jordan

BAR # 95872

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

[x] FAMILY COURT BUILDING, 1501-56 SIXTH, SAN DIEGO, CA 92101-1946
[ ] NORTH COUNTY BRANCH, 325, S. MELROSE, VISTA, CA 92083-6627
[ ] EAST COUNTY COURT, 250 E. MAIN, EL CAJON, CA 92020-3913
[ ] SOUTH BAY COURT, 500 THIRD, CHULA VISTA, CA 91910-5694

PETITIONER/PLAINTIFF: A. ELAINE JORDAN
RESPONDENT/DEFENDANT: ROY G. JORDAN
CLAIMANT:

**FINDINGS AND ORDER AFTER HEARING**
**(Family Law – Domestic Violence Prevention – Uniform Parentage)**

CASE NUMBER: D 304832 TXA

1. This proceeding was heard on (date): 7/18/00

at (*time*): 2:30 p.m.

In Dept: F3

Room:

by Judge (*name*): THOMAS ASHWORTH, III
[ ] Temporary Judge

[ ] Petitioner/plaintiff present
[x] Attorney present (*name*): Kathy R. Recordon

[ ] Respondent/defendant present
[x] Attorney present (*name*): William M. Benjamin

[ ] Claimant present
[ ] Attorney present (*name*):

On the order to show cause or Motion filed
(*date*): 3-13-00 by (*name*): ROY G. JORDAN

2. **THE COURT ORDERS**
3. Custody and visitation: [ ] as attached
[x] not applicable

4. Child support: [ ] as attached
[x] not applicable

5. Spousal-Family support: [ ] as attached
[x] not applicable

6. Properly orders: [ ] as attached
[x] not applicable

7. Domestic Violence miscellaneous orders
[ ] as attached
[ ] not applicable

8. Other orders: [x] as attached
[ ] not applicable

9. [ ] Attorney fees (specify amount):
$ [ ] payable as child support

[ ] payable as spousal support
Payable to (*name and address*):

Payable [ ] forthwith [ ] other (*specify*):

10. All other issues are reserved until further order of the court.

date: Aug. 10, 2000

/s/ Thomas Ashworth, III
JUDGE OF THE SUPERIOR COURT

Approved as conforming to court order.

/s/ [Illegible]
SIGNATURE OF ATTORNEY FOR
[ ] Petitioner/Plaintiff
[x] Respondent/Defendant
William M. Benjamin

ATTACHMENT TO FINDINGS
AND ORDER AFTER HEARING

Evidence was presented, and after argument of counsel the court makes the following findings:

The court agrees with the petitioner on three grounds:

1. Family Code, Chapter 10, starting with Section 2120 applies to Judgments after January 1, 1993. This is a judgment that was entered before that (the underlying judgment).

2. The only basis that has been suggested was perjury. Perjury under Family Code Section 2122(b) relates only to Declarations of Disclosure and Income and Expenses Declarations, neither of which were involved here.

3. It was the intent of the Legislature that this section relates to Judgments and not post-judgment orders. The Statutory scheme as a whole, taking into account that it intends to expand on Code of Civil Procedure Section 473 by its own statements and 473 specifically states "orders" and this section specifically does not state "orders" that is was not intended to extend to orders by any normal statutory interpretation.

4. When the code states certain things, such as Declarations of Disclosure and Income and Expense Declarations, that omits, by normal statutory construction something other than those documents.

5. Each provision in this section refers to Judgments. It refers to stipulated or uncontested judgment, and all the way through this section that is the language that is used. And the language refers to documents that are used for the Judgment in Family Law cases, not for subsequent proceedings, not for temporary proceedings. We are talking about Judgments.

Therefore, Family Code Section 2100 et seq does not apply in this matter.

Code of Civil Procedure 473 does not apply because the alleged would only be intrinsic fraud. The alleged perjury itself is very questionable as to whether it would constitute perjury in any normal way that term is used.

This section indicated that the court may relieve a spouse from a judgment or any part of a judgment, it is discretionary. It requires at least some diligence on the part of the person attempting to set it aside and that was not exercised here.

THEREFORE,

RESPONDENT'S MOTION TO SET ASIDE THE ORDER OF MARCH 15, 1999 AND FILED WITH THE COURT MARCH 23, 1999 IS DENIED.

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Court of Appeal, Fourth Appellate
District, Division One – No. D036330
**S102497**

**IN THE SUPREME COURT OF CALIFORNIA**

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In re the Marriage of ROY G. AND A. ELAINE JORDAN.

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ROY G. JORDAN, Appellant,

v.

A. ELAINE JORDAN, Respondent.

(Filed Jan. 17, 2002)

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The time for granting or denying review in the above-entitled matter is hereby extended to and including February 26, 2002, or the date upon which review is either granted or denied.

/s/ George
Chief Justice

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Court of Appeal, Fourth Appellate
District, Division One – No. D036330
**S102497**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re the Marriage of ROY G. AND A. ELAINE JORDAN.

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ROY G. JORDAN, Appellant,

v.

A. ELAINE JORDAN, Respondent.

(Filed Jan. 29, 2002)

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Petition for review DENIED.

George
Chief Justice

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IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
FOURTH DISTRICT COURT OF APPEAL
DIVISION ONE

| | |
|---|---|
| In re the Matter of Elaine Jordan and Roy G. Jordan | Case No. D036330 |
| Elaine Jordan, Petitioner and Respondent, and Roy G. Jordan, Respondent and Appellant. | Super Ct. No. D304832 |

**APPELLANT'S REQUEST TO AUGMENT THE RECORD ON APPEAL**

Roy Jordan, appellant herein requests that the record on appeal be augmented in two particulars.

First, in preparing the list for the clerk's transcript, certain Reply Declaration that was omitted from the list. Request is made to augment the record with the Reply Declaration of Respondent Roy G. Jordan. The Reply Declaration is marked Exhibit A and attached hereto.

Second, appellant is appealing the denial of his motion [sic] set aside an order made in March 1999. Appellant's English solicitors wrote the San Diego Superior Court on March 10, 1999, via overnight mail. The letter requesting adjournment of proceedings for two

months was received on March 12, 1999. Nevertheless, the Superior Court proceeded to judgment. This letter supports the second issue on appeal, to wit, that respondent's litigation tactics constituted extrinsic fraud. The March 1999 order should have been set aside. The letter is marked Exhibit B and attached hereto. At the time the list of documents was prepared for appeal, I did not realize the significance of the letter, the legal implications of it or that it should be added to the list in addition to the pleadings filed by the lawyers. Request is made to augment record on appeal with Exhibit B.

This request is based upon California Rules of Court, Rule 12; *People* v. *Gaston* (1978) 20 Cal.3d 476, 482-484; *People* v. *Silva* (1978) 20 Cal.3d 489, 493, and *People* v. *Barton* (1978) 21 Cal.3d 513, 518-520.

I declare under the penalty of perjury that the forgoing is true and correct.

Executed Jan. 30 2001 at Leicestershire, ENGLAND

Respectfully submitted,

/s/ Roy G. Jordan
ROY G. JORDAN
Appellant

12-APR-2002 FRI 12:13 ID:BOOTH-INDUSTRIES-GROUP-PLC TEL:0116 271 6786 P:17
LIGHTNER & LIGHTNER PAGE 04
01/22/2002 14:37 619-232-9895

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6 All Other Packaging
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8 Hold for Collection
9 Deliver Weekday
10 Deliver Saturday
11 Direct Signature Required
DANGEROUS GOODS
12 No
13 Yes
14 Cargo Aircraft Only

5 TRANSPORTATION CHARGES
15 Bill Sender
16 Credit Card
17 Bill Recipient
18 Credit/Charge
19 Bill 3rd Party
FedEx Acct. or Credit Card No.

6 OTHER CHARGES
20 Bill Sender
21 Credit Card
22 Bill Recipient
23 Credit/Charge
24 Bill 3rd Party
Credit Card No.

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10 SENDER'S SIGNATURE
By signing on your shipment, you agree to the conditions on the back of this Air Waybill/Shipping Letter. Certain international treaties, including the Warsaw Convention, may apply to this shipment and limit our liability for damage, loss or delay as described in the Conditions of Contract.
Signature X
Date
Do not sign without a completed shipment.

Shipment Weight: lbs. kgs. Total Value: USD

C.O.D. Amount | USD Amount | CD Amount

| Charges | Base Charges | Dec. Val. Chgs. | Other | SUBTOTAL | Total |
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[LOGO]
BENUSSI & CO.
*Solicitors*

10th March 1999

URGENT

Mr. Kenneth E. Martone
Clerk of the Superior Court
Superior Court of California
County of San Diego
Family Court Buildings
1501-55 Sixth,
San Diego
Ca 92101-1946
USA

Dear Sir

A. Elaine Jordan and Roy G. Jordan – Case No. D 304832
Hearing on 15th March 1999 at 8:45 am

We act on behalf of Mr Roy G Jordan in connection with proceedings brough in the U.K. Courts by Mrs A. Elaine Jordan under Part 3 of the Matrimonial and Family Proceedings Act, 1984. Mrs Jordan applied to the Court for permission to issue an Application under Part 3 of the Matrimonial and Family Proceedings Act for Financial Provision in the U.K. Courts on the basis of the Order made in the San Diego Court on 1st January 1991, particularly the pension issue. There was a lengthy Court hearing on 8th and 9th July 1998 when Mrs Justice Hogg of the High Court of Justice, Family Division, in London refused Mrs Jordan permission to proceed with an Application under Part 3 of the Matrimonial and Family Proceedings Act, 1984 in the U.K. Courts.

Mrs Jordan has lodged an Appeal against that Order which is due to be heard around 24th and 25th May 1999.

Mr Jordan was served with Mrs Jordan's Application in your Court in February. Mr Jordan appreciates the importance of his attendance at the appointment on 15th March 1999. However, Mr Jordan is the Chairman of a major PLC in the U.K. and his work commitments have not allowed him to instruct Lawyers in San Diego to deal with the appointment. He is without legal representation in San Diego and we would respectfully request that the above appointment be ajourned to enable him to obtain legal representation and to make arrangements to attend the Court for the purposes of Mrs Jordan's Application.

This matter is complicated by the proceedings presently ongoing in the U.K. and Mr Jordan will require specialist legal advice to deal with the proceedings issued by Mrs Jordan in San Diego in relation to the proceedings presently ongoing in the U.K. Courts.

Mr Jordan intends no discourtesy to yourselves by his inability to attend on 15th March 1999. However, he was only served with Mrs Jordan's Application less than one month ago and he has had insufficient time to arrange legal representation. Mr Jordan would request an adjournment for a period of two months to enable him to obtain legal representation and in the hope that by that time the proceedings in the U.K. may be resolved. Mrs Jordan is not prejudiced by such a delay. She is a wealthy lady and she has already waited some time before issuing proceedings in the San Diego Court.

If you wish to see a copy of the Order made in the U.K. proceedings and a copy of the Judgment on 8th and 9th

July, please let us know and we will arrange for the same to be forwarded to you.

Yours faithfully

/s/ Benussi & Co.
**BENUSSI & CO**